



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1058]

RIN 1625-AA00

Safety Zone; Truman-Hobbs Alteration of the Elgin Joliet & Eastern Railroad Drawbridge; Illinois River, Morris, Illinois

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on the Illinois River near Morris, Illinois. This zone is intended to restrict vessels from a portion of the Illinois River due to the Truman-Hobbs alteration of the Elgin Joliet & Eastern Railroad Drawbridge. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the removal of the Elgin Joliet & Eastern Railroad Drawbridge's old bridge piers and pier protection cells.

DATES: This rule is effective in the CFR from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until December 9, 2011. It is effective for purposes of enforcement from

7:00 a.m. on November 16, 2011 until 7:00 a.m. on December 9, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1058 and are available online by going to [www.regulations.gov](http://www.regulations.gov), inserting USCG-2011-1058 in the "Keyword" box, and then clicking "search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground floor, Room W12-140, 1200 New Jersey Avenue SE, Washington DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at 414-747-7148 or [Adam.D.Kraft@uscg.mil](mailto:Adam.D.Kraft@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision

authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under U.S.C. 553 (b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is insufficient time for the Coast Guard to wait for a notice and comment period to run. The Coast Guard only recently learned that the bridge project described below will take longer than previously planned and consequently, will continue beyond the expiration of the Coast Guard safety zone previously established. Thus, waiting for a notice and comment period to run would be impracticable and contrary to the public interest in that it would prevent the Coast Guard from protecting the public and vessels on navigable waters from the hazards associated with this ongoing bridge construction project.

Under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the reasons discussed in the preceding paragraph, a 30-day notice period would be impracticable and contrary to the public interest.

## Background and Purpose

The Truman-Hobbs alteration of the Elgin Joliet & Eastern Railroad Drawbridge, which consists of the removal of the bridges old piers and pier protection cells had originally scheduled to finish by November 16, 2011. However, it has fallen behind schedule and will now go until December 9, 2011. The falling debris associated with the removal of the bridge's piers and protection cells poses a serious risk of injury to persons and property. As such, the Captain of the Port, Sector Lake Michigan, has determined that the alteration project of the Elgin Joliet & Eastern Railroad Drawbridge poses significant risks to public safety and property and that a safety zone is necessary.

## Discussion of Rule

Because of the aforementioned hazards, the Captain of the Port, Sector Lake Michigan, has determined that a safety zone is necessary to protect people and vessels. The safety zone will encompass all U.S. navigable waters of the Illinois River in the vicinity of the Elgin Joliet & Eastern Railroad Drawbridge between Mile Marker 270.1 and Mile Marker 271.5 of the Illinois River in Morris, IL. [DATUM: NAD 83].

All persons and vessels shall comply with the

instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her designated representative.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF-FM Channel 16 or at (414) 747-7182.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not

interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the bridge project will be relatively small and exist for relatively short duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port or his or her designated representative.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of

vessels intending to transit or anchor on a portion of the Illinois River at various times between 7:00 a.m. on November 16, 2011 and 7:00 a.m. on December 9, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced while unsafe conditions exist. Recreational Vessel traffic will be minimal due to the time of year and Commercial traffic is well aware of this project since it has been active since October 6, 2011. This rule will simply extend the duration of the safety zone that originally was set to expire at 7:00 a.m. on November 16, 2011.

In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port, Sector Lake Michigan, or his or her designated representative to transit through the safety zone. The Captain of the Port or his or her representative can be contacted via VHF-FM Channel 16 or at (414) 747-7182. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so

that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that



Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply,

distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone and is therefore categorically excluded under paragraph 34(g) of the Instruction.

A final environmental analysis checklist and categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-1058 to read as follows

§ 165.T09-1058 Safety Zone; Truman-Hobbs alteration of the Elgin Joliet & Eastern Railroad Drawbridge, Morris, Illinois

(a) Location. The safety zone will encompass all U.S. navigable waters of the Illinois River in the vicinity of the Elgin Joliet & Eastern Railroad Drawbridge between Mile Marker 270.1 and Mile Marker 271.5 of the Illinois River in Morris, IL. [DATUM: NAD 83].

(b) Effective and Enforcement Period. This rule is effective and will be enforced from 7:00 a.m. on November 16, 2011 until 7:00 a.m. on December 9, 2011. If the alteration project is completed before December 9, 2011, the Captain of the Port, Sector Lake Michigan, or his or her designated representative, may suspend the enforcement of this safety zone.

(c) Regulations.

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by

the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(3) The "designated representative" of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant, petty officer, or District 8 Bridge Branch Member who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The designated representative of the Captain of the Port, Sector Lake Michigan, will be reachable via VHF-FM Channel 16 or by calling (414) 747-7182.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her designated representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16 or at (414) 747-7182. Vessel operators given permission to enter

or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

DATED: November 14, 2011

M. W. SIBLEY  
Captain, U.S. Coast Guard  
Captain of the Port, Sector Lake Michigan

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